

### Invoking the responsibility to project: the derogation of its principles and implementation

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Abstracting

# INVOKING THE RESPONSIBILITY TO PROTECT: THE DEROGATION OF ITS PRINCIPLES AND IMPLEMENTATION

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**Abstract:** *The principle of the Responsibility to Protect (R2P) was unanimously endorsed in principle during the UN World Summit 2005. The principle reaffirms the state's responsibility in protecting its citizens, as well as proclaims the International responsibility to citizens. The World Summit emphasizes the importance of citizens to be protected from large-scale humanitarian crisis such as genocide, war crimes, Crimes against Humanity, and ethnic cleansing. Responsibilities to provide such protections will shift from the hands of state actors to the International community if states cannot provide the provision of the outlined protections. Since the implementation, invocations of the R2P have been rare and not implemented in cases that fulfill the criteria of the R2P principle. Such issues have led to the derogation of its principles and implementation, marked with a number of primary cases that are related to the R2P, including: (1) lack of clarity in regards to the criteria of "Crimes against Humanity", (2) prevalence of political interests that occur in the application of the "Just Cause" criteria, and (3) misinterpretation of the Responsibility to Protect. The major cases have proven disastrous, as the issue of not invoking the R2P principle, or the misapplication of the principle, have led to the humanitarian crisis felt by millions of innocent civilians located all over the globe, which urgently required external assistance and protection at that time.*

**Keywords:** *International Law; Responsibility to Protect; International Norm; Human Rights; United Nations*

## INTRODUCTION

The “Responsibility to Protect” (R2P) is a concept of state and international responsibility to citizens. Unanimously endorsed in principle by the international community at the UN summit 2005, the R2P consists of elements including the responsibility to prevent, react, and rebuild. These responsibilities are expected to position states to have the primary R2P its citizens from genocide, war crimes, Crimes against Humanity, and ethnic cleansing. But the failure to fulfill this responsibility, and inability to utilize assistance provided by the International community, would shift the responsibility to the international community. Recognized for his immense contribution in establishing the term Responsibility to Protect, Gareth Evans in a 2011 speech stated that: “For centuries, right up to the beginning of our own, mass atrocity crimes perpetrated behind state borders were seen primarily as nobody else’s business. Now, at least in principle, they are regarded as everyone’s business” (Breau S. C. 2016). Despite Evan's morally lifting speech, there have been significant doubts about the success rate of implementing the principle of R2P. This research thus aims to provide an overview of how the R2P was adopted as a UN principle, and analyzing the problems associated with the implementation of the principle itself.

## THEORETICAL FRAMEWORK

The analysis of the derogation of R2P’s principle and implementation in this research will be based on a constructivist approach. As one of prominent IR theoretical grounds, it extends theorization of international norms construction, which brings international community in shared values and inter-subjectivities leading to the international cooperation to tackle issues disrupting international stability and security. It is particularly focused on the norm life cycle theory emphasizing three crucial processes comprising the norm emergence, cascade, and internalization (Crosley 2016; Finnemore and Sikkink, 1998).

In this respect, an emergence of the international norm is firstly derived from the promotion of beliefs and concerns of several Member States of international institutions towards certain values (Hibbert 2017). They are called norms entrepreneurs, who devote themselves towards norm development by relentlessly persuading other Member States in the institution to implement it. When at least one-third of them have recognized the norm, it has then achieved tipping point where it enters the stage of norm cascade, indicated by the states consciously adopt the norm and will incline to further promote and socialize it to the other states and actors in the international system. Through such a socialization process, the norm breakers would be influenced to be norm followers. At this rate, the state's compliance with the norm is promulgated by both its identities as the member of the institution and the accumulative peer pressures

in it. The last stage then is internalization, where the states internalize the norm and make it be widely accepted until it has obtained a “taken-for-granted” quality. At this phase, the automatic compliance to the norm will be in place, and it will not be longer contested. Additionally, states will also craft domestic regulations protecting and strengthening its implementation (Breau S. 2016).

In the context of R2P, it is also considered as an international norm constructed throughout the aforementioned processes of norm life cycle. Its emergence is a product of inter-subjectivities among state leaders, who shared values and significance of protecting humanities from large-scale humanitarian crisis such as war crimes, genocides, ethnic cleansing, and Crimes against Humanity. It has also passed the process of norm cascade, shown by how it was unanimously endorsed and recognized as an international norm within the UN system. However, despite those endorsements and recognition, it still faces difficulties in its internalization process, where its universality and impartiality are still questioned and problematized by the international community (Rottman, Kurtz, and Brockmeier 2014). At this juncture, it has not yet reached a “taken-for-granted” quality that could cause automatic compliance in its implementation. In this regard, the process of R2P invocation in dealing with large-scale humanitarian crises has always generated dissenting views among UN Member States.

Some of them are particularly related to how R2P sits in conflict with the UN traditional and grounded norms of sovereignty and non-intervention and with its potential politicization based on UN member state's interests. In examining these problems, this research thus analyzes that the fundamental problems lay on three points, encompassing the lack of clarity upon the concept of “Crimes against Humanity”, the flexibility of the “Just Cause” criterion, and the misinterpretation of R2P. Overall, these will be further discussed in the next section (Evans and Sahnoun, 2002; Fitzsimons, 2016).

## HISTORY OF THE RESPONSIBILITY TO PROTECT

The principle of R2P was adopted by the UN based on the mere fact that the International community needed a clear and accepted norm to guide the responses during cases of mass atrocity crimes (Simeon, 2017). The severe and inconsistent responses by the International community during situations of humanitarian crisis left a huge concern by former UN Secretary-General Kofi Annan, during the late 20th century. Leading to this fact was a series of events in which the International community either failed or did not provide a sufficient response to deter the crises. There was the Rwandan tragedy where the lack of political will by the United Nations Security Council (UNSC) Member States led to the death of 5-10% of Rwanda's population in 1994 (Hintjens 1999). There was also a case of the Kosovo dilemma in 1999, in which NATO's aerial bombardment attempted to halt ethnic cleansing in Kosovo was referred as

'illegal' by the International community (Roberts, 1999), as it did not contain authorization by the UNSC (Wilson 2008). The key events mentioned above gave the International community a challenge to conceptualize a framework for intervention.

It took years of conceptual and definitional debates on principles concerning sovereignty, intervention, and responsibility, to eventually come up with the norm of R2P. Francis Deng, Former Secretary-General's Special Representative for Internally Displaced Persons in his work related to the fate of vulnerable groups like displaced populations and refugees in the late XX century (O'Donnell 2014), started to conceptualize a framework of collective security which eventually places an immense responsibility to state actors to protect its citizens from violence, in which the failure to do so would lead to the shift of responsibility to the International Community.

But what evidently led to the conception of R2P is Kofi Annan's challenge to the Millennium General Assembly in April 2000, which is reflected clearly by questioning; "If Humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica-to gross and systematic violations of human rights that offend every precept of our common humanity?" (Annan 2000). The Canadian sponsored International Commission on Intervention and State Sovereignty (ICISS) responded, by taking Kofi Annan's challenge in 2001. The ICISS report published in 2001 under the title "The Responsibility to Protect", framed the concept of state's obligation to protect its citizens from human rights catastrophes, and that the International community would have to respond if states aren't able to provide that very protection. After the introduction of the term R2P by the ICISS, the UN General Assembly officially embraced the principle at the World Summit 2005 (Bellamy and Dunne 2016).

Formally agreed nine years past, the question now lays on the implementation issues faced in implementing the principle of R2P. It is nevertheless essential to outline the major success that the R2P has resulted. The forms of R2P actions is strictly based upon the UN charter which provides the legal foundations, asserted in Chapter VI (Pacific measures), Chapter VII (coercive measures), and chapter VIII (measures collaborating with regional and sub-regional arrangements). Divided into two basic categories, a clear success is reflected in the R2P's non-coercive response in Kenya. The 2007-2008 post-election crises in Kenya eventually could be halted due to responses by mediations led by former UN Secretary-General Kofi Annan, resulting in a power-sharing between President Mwai Kibaki and Raila Odinga (Halakhe 2013).

Another successful example in the form of coercive measures upholding the R2P principle can be seen in the 2011 No-Fly Zone of Libya. The Arab Uprising that spread to areas of Libya in February 2011 is responded by pure aggression by the then leading dictator Muammar Qaddafi. Unable to control the growing rebellious movements, Muammar Qaddafi threatened to use aerial bombardment to respond to the protests.

Eventually, UNSC Resolution 1973 was passed, taking in the form of airstrikes led by the US, France, and the UK (O'Sullivan 2017). The use of R2P in the examples above is an apparent breakthrough, but still far from reaching the successful threshold as a principle.

## DEROGATION OF THE RESPONSIBILITY TO PROTECT PRINCIPLES AND IMPLEMENTATION

The underlying issue faced by the implementation of the R2P principle is the unclear crimes triggering the R2P. The vague practical framework leaves ambiguity, questioning to what extent does each criterion has to be fulfilled before action is taken. The Definition of "Crimes against Humanity", clarity of the "Just Cause" criteria of R2P actions, and the possible misapplication of the R2P principle, all leaves marks on the unclear practicality of the R2P principle. Each of the issues mentioned above leaves an immense dilemma for the International society, in regards to when intervention would be justified and not perceived subjectively as a nationalistic agenda to interfere with a country's state of affairs.

### *Lack of Clarity to the "Crimes against Humanity"*

The "Crimes against Humanity" is included as one of the four crimes that would trigger an International response. The problem that occurs is that the type of crime itself is broadly defined; take for example the ICC's Rome Statute of 2002 which describes "Crimes against Humanity" primarily including all cases of "inhumane actions" (Grover 2014). The broad scope of occurrences that can be categorized as a crime against humanity has led to subjective interpretations of what cases includes as widespread, systematic attacks that are directed to individuals or particular parts of the society. A bigger issue is how Crimes against Humanity may occur not only at times of crisis / war, as it can easily occur during times of peace. The historical basis of this term has been mainly used during the Nuremberg Trials, which was a trial that prosecuted a number of World War II officials from the Nazi Regime. The confusion to the term has proven disastrous in cases such as Myanmar Cyclone Nargis, May 2008. Known as the worst natural disaster recorded in Myanmar's history, the cyclone caused catastrophic destructions in areas such as the Labutta Township. An estimated 84,500 people were reported dead, 53,800 missing and 19,300 injured (International Federation of Red Cross and Red Crescent Societies 2011, 5). But taking aside the deaths and destructions caused by the natural disaster, the second wave of casualties were felt by the Myanmar civilians due to the lack of relief efforts, an outbreak of diseases, and failure to provide necessities of human life to the victims of the Cyclone Nargis. This second wave of catastrophe occurred when the Burmese government made it clear that it was not

about to let aid into the country (Hilpold 2014). The military junta intentionally wanted the relocations of the tribal peoples living in the cyclone hit Southern Myanmar. The state blockage conducted by the Myanmar military junta caused an International outbreak. French Foreign Minister, Bernard Kouchner proposed the invocation of the R2P, saying that a denial of access to cyclone victims deliberately caused massive suffering and even death, therefore falling under the category of Crimes Against Humanity (Borger and Mckinnon 2008). Seeing the possible humanitarian losses caused, the United Nations Security Council demanded access to the state, but anti-interventionist states in both the permanent and non-permanent seats at the council declined the proposal, which included states like China, Russia, and South Africa. This category of states believed that this was an internal matter. Therefore, no form of intervention is justified to be implemented coercively.

The dilemmatic case of the Myanmar Cyclone Nargis led to debates, prominently between UN Special Adviser to the UNSG Edward Luck claiming that R2P would not stretch to such environmental crises, and Gareth Evans, arguing that actions later after the disaster by Myanmar's military Junta, intentionally led to Crimes against Humanity (Hehir 2014). Eventually, the case of Myanmar's Cyclone Nargis reflects a derogation of the R2P principle, in which although the principle was never intended to include matters of natural disasters, civilian casualties in massive number still occurred due to national policies that have been set, leading to accumulated deaths. Galvanizing political action, as well as a unified humanitarian response, could not be realized due to the stagnated debates over whether the policies invoked is a form of "Crimes against Humanity" or not.

### *The Flexibility of the "Just Cause" Criterion*

A major issue with the implementation of the Responsibility to Protect is the "Just Cause" that is utilized as a criterion to justify coercive actions of military interventions. The Just Cause threshold explains that actions must be taken in cases of serious harm, which imminently likely to result in large-scale loss of life or massive ethnic cleansing. The lack of a unanimous understanding of the cases that the principle is meant to cover, especially in regards to what extent can a case be categorized as "large killings", have led the International community to again fail to respond towards the massive killings in Darfur and Sri Lanka, despite the fact that a military/ coercive action is indeed an option that could be taken. The International community failed in addressing the massive killings in Darfur since 2003 by Khartoum sponsored Janjaweed militias, with aims of crushing the pro-separatist movements of both the Justice and Equality Movement (JEM) and Sudan People's Liberation Army (SPLA) (Williamson 2009, 1-2). The Government of Sudan has been accused of oppression in Darfur, as the region demographically consists of non-Arab populations. The conflict lasted for approximately



13 years, with the Sudan President, Omar Al-Bashir, indicted for genocide, war crimes, and Crimes against Humanity by the International Criminal Court. Since the adoption of the R2P was effective starting 2005, a major question arises on what has the R2P principle contributed to relief the tensions that occurred in Darfur, Sudan. Under the "Just Cause" criterion, the outcome and events of the Darfur conflict exceed the need for interference, as targeted mass killings have occurred. Though the breakout of the conflict started in 2003 where the principle has not been concluded, the R2P principle could have been invoked starting from the year 2005 onwards.

The only response of the UN since the implementation of the R2P principle since 2005 was the UN Mission in Sudan (UNMIS), a response lacking strength and commitment to eventually end the crisis that has taken approximately 300.000 lives of the Sudanese people (Cockett 2010). This raises the question of why the R2P was not invoked meanwhile all of the set criteria have been fulfilled. But the issue then repeats itself in the case of Sri Lanka and Tamil Tigers conflict. The case of Sri Lanka and Tamil Tigers was one that caused devastating humanitarian catastrophes. Under the leadership of Mahinda Rajapaksa, the Sri Lankan Government intentionally created large-scale losses of life during Sri Lanka's destruction of The Liberation Tigers of the Tamil People (LTTE) in 2009, leading to 40.000 civilian deaths (Wright and Martin 2008). The separatist group was devoured and resulted in one of the bloodiest ethnic assassinations of the 21st century. What becomes an issue is that the case of the Tamil Tigers also fulfills the threshold of massive numbers of lives losses, therefore should easily be categorized as a "Just Cause" for R2P invocation.

The failure of the International community to address both the issues raises a concern of subjective national interests and political will to intervene in cases of humanitarian crisis. The overall failure of implementing the threshold as a basis of the R2P principle is mainly caused by the persistent lack of political will by Member States to act. There has been inconsistent support by the permanent five members of the UNSC in applying the R2P, in which the reluctance of state actors to act is mainly determined by the existence or absence of national interest in the matter. Also, difficulties of pushing an act of intervention are conceived difficult, as these P5 members will be at the forefront of contributing troops to the operation. In one way we could say that the P5 upholds and respects the principle of R2P, but at the same time, the R2P automatically is perceived as a principle with high potentials to curtail their use of the veto rights (Glanville 2014). It is hard to take unanimous decision to act if such strong political persistence exists in the decision-making process of action. For example, the lengthy discussion over intervention in Syria has resulted in two differing blocks. The US, UK, and France block have in contemporary times shown their utmost support for the very concept of intervention. On the other hand, Russia and China since the XXI century have advocated a discontent in regards to any form of intervention that would infringe and re-conceptualize the sovereignty of a state (Harris 2012).




### ***Misinterpretation of the "Responsibility to Protect"***

Misinterpretation of the "Responsibility to Protect" principle has been evident in the past. Gaps in the definitions of the Responsibility to Protect have resulted in states to invoke the principle to fulfill ambitious expansionism interests. The fundamental issue here is that the principle is used as an excuse to cover up policies that are coercive, and aimed solely for national interest gains. Despite only happening once since the implementation of the R2P principle in 2005, this should be a key concern in the implementation of the principle in the foreseeable future. Russia's 2008 intervention in Georgia is a clear example of the false application of the R2P principle.

In the perspective of the Russians, R2P is defined based not only on the protection of people inside the state but further extended to the Responsibility to Protect all nationals of the state, despite being located in foreign states. This led to the Georgian invasion in 2008, claiming to protect the oppressed Ossetians and the Russians living in the area (which were also Ossetians) (Ercan 2016). The Russians in response to the Georgian aggression conducted extended military action aimed to stop what they claim as possible threats of genocide. Further to justify their actions, Russian Foreign Minister, Sergey Lavrov stated in 2008 that:

According to our constitution, there is also a Responsibility to Protect. The term which is very widely used in the UN when people see some trouble in Africa or any remote part of the regions. This is the area, where Russian citizens live. So the Constitution of the Russian Federation, the laws of the Russian Federation makes it absolutely unavoidable for us to exercise Responsibility to Protect (The Ministry of Foreign Affairs of the Russian Federation 2018).

### **CONCLUSION**

The principle of "Responsibility to Protect" is still a new idea, which still fails to create and implement clear lines of the practical framework that would guide the international community on its application. This becomes a serious concern, as the UN and state actors unanimously adopted the principle of R2P, with high hopes of ending the inconsistencies of humanitarian response. Upon the application of the R2P in 2005, the Principle though became a morale lifter for global collective response to a crisis, and the principle still faces a continuous circulation of problems. The issues concerns undefined criteria, the justified extent of criteria violated before action is to be taken, and issues of national interest, all equally contributing towards the implementation issues faced in upholding the principle of "Responsibility to Protect". 

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